



OFFICE OF THE CITY CLERK

REPORT

REPORT TO THE COMMITTEE ON RULES, OPEN GOVERNMENT AND INTERGOVERNMENTAL RELATIONS

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SUBJECT: INFORMATIONAL REPORT: MAIL-ONLY BALLOT ELECTION

I. INTRODUCTION TO MAIL-BALLOT ELECTION

In a mail-ballot election, every voter in the jurisdiction is provided with an absentee ballot. Mail-ballot elections in the U.S. have a fairly long history both at the statewide and at the local level.

Local jurisdictions in Oregon have conducted mail-ballot elections since 1981; and in 1998, 67% of Oregon voters approved voting by mail for all elections, including federal elections. Five years later, a University of Oregon survey suggested that Oregonians, across all demographic and partisan categories, continue to favor this type of election. Almost a third of respondents reported that they voted more often with vote-by-mail – particularly women, the disabled, homemakers and those age 26-38 years. Results also suggested that no partisan advantage is likely to result as a consequence of elevated turnout under vote-by-mail.

Currently, Oregon is the only state that conducts all of its statewide elections on an all-mail basis. However, in 2005, the Washington State Legislature amended state election law to authorize counties to exercise a local option to conduct all elections by mail. Shortly thereafter, 29 of the state's 39 counties adopted the local option, and now only one county continues to use poll sites.

Other states, including California, permit all-mail ballot elections only under specific conditions—usually for local or special elections. Recent local examples include the 2008 mail-ballot election for the Tri-City Healthcare District, conducted by the San Diego County Registrar of Voters (ROV). That election involved 141,001 registered voters, and resulted in a 37.56% turnout. On May 5, 2009, the ROV conducted a mail-ballot election for the Charter city of Chula Vista, at which 103,985 registered voters were eligible to cast their vote on a single proposition; turnout was approximately 27.5%.

Two California counties—Alpine and Sierra—conduct all-mail ballot elections for all local, state, and federal elections, thanks to a provision of law allowing counties with precincts with fewer than 250 voters in them to turn them into all-mail ballot precincts. Additionally, California recently has allowed any voter to register as a “permanent absentee voter,” essentially enabling all registered voters to vote by mail. Approximately 38.36% of the City of San Diego’s current voters are permanent absentee voters.

In a report prepared earlier this year, the Orange County Registrar of Voters noted that, historically, the State Legislature has not been supportive of allowing counties the option to conduct vote by mail elections; the majority of bills have either died in committee or have been vetoed by the Governor. The report posits that the decrease since 2007 in the number of bills proposed on the issue of voting by mail is “likely in response to the constant rejection they have encountered in recent years.”

Nevertheless, California’s Charter cities have more leeway to conduct mail-only elections than do the state’s general law cities. For example, in 1981, the City of San Diego held a special, one-issue referendary election in which 60.8% of the registered voters cast ballots; that the election would be conducted by mail only was directed by the City Council in Ordinance No. 15452.

In 2003, the citizens of Burbank approved an advisory ballot initiative amending that Charter city’s municipal code to allow for conducting primary nominating elections and general municipal elections wholly by mail, beginning in 2005. This November, the Charter City of Santa Barbara will conduct its general municipal election by mail only; Santa Barbara’s Charter allows the City Council by resolution to authorize the conduct of an election by mail. The 2009 mail-only election in Chula Vista was also mandated by Council resolution.

Deputy City Attorney Sharon Spivak has advised that municipal election procedures in a Charter city are a municipal affair and subject to municipal control, so that the City of San Diego is able to adopt its own rules for its own elections. Currently, it is not possible to use an all-mail ballot for any election which the City chooses to consolidate with a state or federal election. However, practically speaking, the City may hold any “stand-alone” election—such as a special election to fill a vacancy in a Council seat—by mail. In fact, as mentioned earlier, in 1981, the City successfully held a City-wide referendum election by mail. It should be noted, however, that there may be time constraints related to any “stand-alone” election scheduled shortly before or after any state or federal election, should the City wish the Registrar of Voters to conduct the mail-ballot election. In addition, a Charter amendment would be required if the City wanted to conduct regular elections by mail.

For a special election, the enabling procedure is fairly straightforward: the City Council adopts the implementing ordinance.

II. SPECIAL ISSUES

There are a variety of special issues pertinent to conducting mail-ballot elections, including cost considerations, voter turnout and the potential for voter fraud.

COSTS

Conducting a mail-ballot election obviously eliminates costs related to polling place rentals and equipment, and reduces some costs related to staff and contract labor. However, costs for signature verification and mailing—including return postage for voted ballots—clearly increase. Additionally, it would be worthwhile to consider an educational outreach/publicity campaign should a mail-ballot election be called; this would have its own cost.

Some jurisdictions, such as the State of Oregon, claim considerable cost savings by moving to mail-only elections; in fact, with its 1981 all-mail ballot, the City of San Diego reportedly saved 40% of the cost of a conventional election, and the Registrar of Voters has estimated 30-50% savings for a present-day mail-only election. However, other jurisdictions acknowledge no savings or increased costs. Initial analysis by the City of Burbank of costs incurred indicated that the overall cost of its mail-ballot election was higher than conducting a polling place election, although the cost per vote cast was significantly lower; the City of Santa Barbara expects a potential savings of \$50,000 this November. It should be noted that neither Burbank's nor Santa Barbara's elections are consolidated.

In a report prepared earlier this year, the Orange County Registrar of Voters indicated that, should voting by mail be allowed statewide by a change in state law, and should Orange County choose to implement an all-mail ballot voting system, that jurisdiction would realize a savings of approximately \$200,000 per election. Those savings are expected to derive from eliminating sample ballots, poll site costs, poll worker pay and poll worker training, among other factors.

In past analyses, Deputy Independent Budget Analyst Penni Takade has indicated that she does not anticipate any significant cost differentials in implementing a mail-only election, based on a forecast using actual costs related to the January 10, 2006, special run-off elections in Council Districts 2 and 8 for comparison. In fact, only in scenarios involving a significant increase in voter turnout was the cost per voter reduced, and the overall cost always rose. The issue of return postage plays a not-insignificant role in cost calculations.

It is also important to note that future printing, labor and postage costs are certain to rise.

However, there are other "cost" considerations to be factored into the equation, especially relative to the process of locating appropriate polling locations and recruiting poll workers. In a City election, both of these time- and labor-intensive tasks are typically undertaken by the San Diego County Registrar of Voters, with whom the City contracts to provide election services. Polling places must provide

for disabled access, sufficient parking, and sufficient space for polls, plus amenities necessary for poll workers during a 12- to 14-hour day. Recruiting qualified election officers, especially those who are bilingual, is also a daunting task; last-minute cancellations by poll workers can be fairly common. Conducting an all-mail election removes these factors, to the benefit of the City, especially should the Registrar of Voters be unable to provide its services for a particular election, so that the bulk of the tasks falls to the City Clerk or an alternate vendor.

IMPACT OF MAIL-BALLOT ELECTIONS ON VOTER TURNOUT

Mail-ballot elections may be one factor making voter turnout in Oregon consistently higher than the average national voter turnout. For example, in the U.S. 2004 presidential general election, the nation experienced a turnout of 58.4% of the voting-age-eligible population, while Oregon had a record 70.6% turnout. The state's turnout of registered voters for that election was 86.48%, compared to California's 57.03% and to San Diego County's 58.23%. The City of San Diego's ballot featured run-off elections for the offices of Mayor, City Attorney, and District 1 Councilmember, in addition to seven propositions; citywide turnout was 73.93%.

Mixed Results

However, evidence is mixed on how significant an impact voting by mail may have on voter turnout. It appears that mail-ballot elections do increase turnout, but that the increase is generally noticeable only in low-profile contests such as local elections and primaries. In fact, a recent study (Kousser and Mullin, 2007) finds indications that voting by mail actually may have a small *negative* impact on participation in general elections. However, that study also shows that voting by mail "brings a clear and consistent increase in turnout in municipal special elections," potentially as high as eight percentage points.

It is commonly accepted that voter turnout for any given election is the result of a number of factors, including which offices and issues are on the ballot, and how high-profile those offices and issues are.

The 2000 election was the first presidential election held entirely by mail in Oregon, and turnout increased in that election by 8.5% over the 1996 turnout. The 2001 study "Who Votes by Mail?" (Berinsky et al) posited that not all of the increase was a result of the switch in voting techniques, as the ballot had such a large number of referenda on it that the ballot ran to two punch-cards per voter for the first time.

The 2009 report from the Orange County Registrar of Voters found that "(d)espite claims to the contrary, data from Oregon and Washington Secretary of State's offices does not show an increase in voter turnout when vote by mail elections are held." The Orange County Registrar further concurred that it would be difficult if not impossible to credit any voting system with an increase or decrease in voter turnout.

Mail-Ballot Elections Do Not Appear to Increase Registration

Additionally, data indicates that any increase in voter turnout actually attributable to voting by mail results from retaining existing voters rather than recruiting new voters into the system. The purpose of mail-ballot elections is not to increase voter registration, but to make it easier for those who are registered to vote.

In fact, mail-ballot elections do *not* appear to draw non-voters into the electorate—if there is any impact on a voter's decision to register, that impact appears to occur at the first, and only the first, opportunity to vote by mail. However, mail-ballot elections *do* appear to retain voters by removing obstacles such as illness, traffic or busy-ness, which might reduce one's likelihood of voting on a given election day.

This conclusion is supported by a 2005 study from the University of Oregon, which found that certain groups of individuals—women, young people (26-38 years of age), and the disabled and retirees—found mail-ballot elections to be more convenient than polling-place elections held on a single election day. In fact, using data from the 2003 Oregon Annual Social Indicators Survey, the University of Oregon study found overwhelming *support* for vote-by-mail (compared to polling-place elections); the data indicates that the preference is consistent across all demographic and attitudinal subcategories. (Conversely, in November, 2006, Arizonans voted down a proposition which would have established mail-ballot elections in that state, by a 71.06% [no] to 28.94% [yes] margin.)

Mail-Ballot Elections Have Questionable Impact on Minority Voter Turnout

To date, no studies have definitively shown that mail-ballot elections have either a significant positive or a significant negative impact specific to minority voter turnout. It is worth mentioning again that allowing mail-only elections is *not* a tool for increasing voter registration.

Voting behavior expert Paul Gronke (Reed College, Oregon) noted in 2006 that mail-only elections do not appear to make voting sufficiently convenient to overcome barriers to higher turnout in minority and disempowered communities.

Gronke has interpreted data as indicating that few, if any, racial differences appear in turnout for early or absentee voting. However, in 2007, the University of California, San Diego's Dr. Thad Kousser anecdotally interpreted Berinsky et al to mean that the problem of under-representation is increased, because turnout rates are increased for those who "always used to turn out" but not for those who had always been under-represented.

The report of the 2001 National Commission on Election Reform found that in 1996, "use of absentee ballots varies by race. Blacks are only half as likely as whites to vote absentee." Gronke attributes this to the fact that while some states had begun relaxing absentee ballot requirements by 1996, states with

large African-American populations, particularly in the South and Northeast U.S., still had very restrictive rules.

The Brennan Center for Justice at NYU School of Law noted in 2005 that there may be disproportionate *information* regarding the process for absentee balloting among different racial communities. Individuals who voted absentee were disproportionately white nationwide in 1996, and the Brennan Center reports that no evidence exists to indicate that that disproportion has changed, additionally noting that legal opportunity to vote by absentee ballot does not necessarily translate into preference or habit. The Brennan Center admits, however, that it is unaware of any studies examining the racial impact of reforms such as relaxing absentee ballot requirements.

That has been the difficulty in determining the impact of mail-only elections on minority voter turnout: the lack of definitive data.

However, in the 2005 University of Oregon study, some 81.5% of white respondents reported *preference* for voting by mail, while 79.3% of non-white respondents reported the same preference. Nearly two-thirds of all respondents self-reported that the frequency of their voting was “about the same” (white=66.8%; non-white=66.1%), and approximately 28% of all respondents self-reported that they voted more often using the mail-ballot system (white=29.6%; non-white=27.1%). A small portion of respondents self-reported that they voted less often under the system (white=3.6%; non-white=6.8%).

Post-election surveys are often exit polls or random digit dialing (RDD) telephone polls where respondents are assumed to provide correct and complete information. It is commonly accepted that registered voters tend to over-report their voting activity; i.e., in post-election surveys, an individual may report that he or she participated in the election, when that is not, in fact, the case.

It is also important to mention that neither Oregon nor California collect race and ethnicity data on their voter registration forms, although “ethnic background” is included on California’s form as an optional item.

In 2007, California Assembly Bill 1654 (Huffman) would have allowed any local, special, primary or general election to be conducted as an all-mail ballot election subject to certain conditions. The bill was ultimately not heard in committee, as the hearing was cancelled at the author’s request. However, at the time of its introduction, the bill was supported by such as the City Clerks Association of California and the California State Association of Counties, the latter of which noted its belief that all-mail balloting would increase voter participation. Opponents to the bill included the Mexican American Legal Defense and Educational Fund (MALDEF) and the Asian Pacific American Legal Center (APALC). MALDEF found data that it believed supports the concept that minority and low-income voters prefer to cast their votes at a polling place, in lieu of absentee voting. APALC expressed concern that providing language assistance to limited English proficient voters would be compromised by the implementation

of mail-only elections. APALC was also concerned that voters from populations with high rates of mobility would not receive their absentee ballots in the mail.

POTENTIAL FOR VOTER FRAUD IN MAIL-BALLOT ELECTIONS

Finding agreement on the prevalence of fraud in absentee balloting or mail-only elections is also difficult. As recently as this year, there have been conflicting arguments on the issue.

In early 1998, the Florida Department of Law Enforcement (FDLE) issued a report with observations on actual and potential voter fraud issues in that state. While not principally responsible for monitoring Florida's election issues, the FDLE had recently conducted "criminal investigations of specific allegations of election fraud or other misconduct" and had subsequently identified what the Department considered to be basic trends in election fraud in the state and nationwide.

Pertinent to absentee ballots, the FDLE found three areas that it considered "ripe" for potential abuse:

- a) Using absentee ballots improperly. The FDLE noted that relaxing voter registration requirements had the potential for increasing fraudulent registration. Once registered, a voter has the opportunity to vote absentee in each future election, with no "in-person, at-the-polls" accountability. The FDLE concluded that absentee ballots were the "tool of choice" for individuals seeking to commit voter fraud.

However, in California, voter fraud is punishable as a felony. Recent discussions with the San Diego County Registrar of Voters have made us aware that voter identification is more closely scrutinized in a mail-ballot election than in a standard election. Voters at local polling places are asked for identification only under specific, limited circumstances, whereas returned mail ballots are subject to both a signature identification check and a residential address check.

Berinsky et al noted that the 2000 presidential election in Oregon resulted in no significant charges of fraud or corruption, reflecting no change from other recent Oregon elections. The 2005 Carter-Baker study ("Ballot Integrity and Voting by Mail: The Oregon Experience") concurs that Oregon has been "relatively free" from voter fraud controversies; the single documented case occurred in 2003, when someone who was not a U.S. citizen registered to vote. It is possible, then, that Oregon's voting system has deterred voter fraud in the state, as it incorporates a variety of security measures, including a signature authentication system, in addition to substantial punishment for those convicted of engaging in voter fraud.

- b) Illegally or improperly "assisting" others to vote their absentee ballot. The FDLE also expressed its concern that absentee ballots could be fraudulently used without the actual voter even knowing it. Those with access to the "ill or

infirm or those who do not have the ability to resist the influence of another” could have a tremendous opportunity to mark or force to mark the absentee ballot in a way that differs from how the actual voter wants or expects or believes it to be marked. The same opportunity exists with voters “whose interest in voting is marginal or non-existent.”

- c) Vote-buying. The FDLE contends that offering payment or some sort of reward for marking any ballot a certain way is a problem in any election, and that absentee ballots make vote-buying easier, as the buyer can physically see the ballot being marked.

Additionally it has been noted that there is the perception that ballots mailed to voters by the election official may be intercepted and voted by someone other than the voters for whom they were intended. However, the Carter-Baker study found that, in Oregon, the cooperation of the U.S. Postal Service helped prevent ballots from being mis-delivered, and that this was a factor in reducing the risk of large-scale attempts to cast fraudulent ballots.

Some voters may not wish to return by mail a ballot on which their signatures are clearly evident; drop-boxes or neutral drop-locations have been suggested as a way of remedying this situation. However, the Carter-Baker study found a degree of risk for election fraud in such ‘non-mail’ return of ballots. Oregon voters use official drop-sites, including drop boxes; additionally, a voter’s ballot may be picked up at the voter’s home by volunteers, who are often sponsored by political groups or by elected officials as a form of constituent service. The Carter-Baker study found no documented cases in which such ballots were tampered with or destroyed, but notes that election officials cannot confirm receipt of every ballot given to anyone other than an authorized election official.

How Prevalent Is Voter Fraud?

In late 2006, the U.S. Election Assistance Commission (Commission) published its report “Election Crimes: An Initial Review and Recommendations for Future Study,” phase one of what the Commission sees as a comprehensive study of voting fraud and voter intimidation, among other election-related issues. It should be noted that the Commission’s report has generated a degree of controversy.

During its research, the Commission found no studies conducted in the past based on “a comprehensive, nationwide study, survey or review of all allegations, prosecutions or convictions of state or federal crimes related to voting fraud or voter intimidation in the United States.” Rather, reports tended to be limited to small numbers of case studies or instances of alleged voting fraud or voter intimidation. The Commission also noted that, in its research, it found “no consensus on the pervasiveness of voting fraud and voter intimidation,” but noted “the pervasiveness of *complaints* (emphasis added) of fraud and intimidation throughout the country.”

In early 2007, representatives of The Brennan Center expressed their belief that “evidence of actual fraud by individual voters is painfully skimpy,” although they

were not specifically addressing issues directly related to mail-ballot elections. Their conclusion was echoed in Project Vote's 2007 study, "The Politics of Voter Fraud," which reported, "At the federal level, records show that only 24 people were convicted of or pleaded guilty to illegal voting between 2002 and 2005, an average of eight people a year. The available state-level evidence of voter fraud, culled from interviews, reviews of newspaper coverage and court proceedings, while not definitive, is also negligible."

However, it should be noted that the Commission's work addressed elections in general, not mail-ballot elections or absentee ballots specifically. Nevertheless, the Commission noted that interviews and conclusions gathered from books, articles and other studies indicated that its sources "largely agreed that absentee balloting is subject to the greatest proportion of fraudulent acts, followed by vote-buying and voter registration fraud." Consequently, the Commission recommended a study specific to absentee ballot fraud; the study should consider how absentee ballot fraud schemes are conducted, and propose methods for preventing such fraud.

Further, there have been a number of recent disputed elections and documented cases of absentee ballot fraud. Law professor Richard L. Hasen (Loyola Law School, Los Angeles) noted in 2007 that "(m)ost of the documented cases of voting fraud in the United States in recent years involve absentee ballots." In 1998, the courts threw out all of the 4,740 absentee ballots cast in the 1998 Miami mayoral election, and overturned the original election results. Absentee ballots were cited as a source of some of the problems in the November 2004 Washington gubernatorial election. The Carter-Baker study notes other recent allegations of election fraud that involve absentee ballots in Colorado, Michigan, New York and Mississippi. Additionally, the Kousser-Mullin study reports such a case in a 1993 California mail-only special election, "when a voter who appeared in registration rolls under two names because of a change in marital status cast and returned both ballots."



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